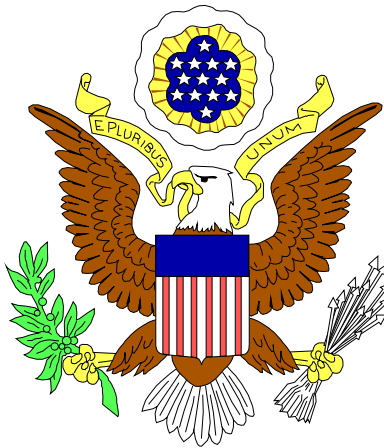


**UNITED STATES DISTRICT COURT**  
**FOR THE**  
**WESTERN DISTRICT OF NEW YORK**



**LOCAL RULES OF CRIMINAL PROCEDURE**  
**(Effective January 1, 2011)**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**IN RE ADOPTION OF LOCAL RULES OF CRIMINAL PROCEDURE**

**FOR THE**

**WESTERN DISTRICT OF NEW YORK**

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These Rules were prepared by the Judges of the United States District Court for the Western District of New York, in collaboration with the federal bar.

It is so ordered that these Rules, as amended, shall apply to all actions commenced on or after January 1, 2011, and, insofar as just and practicable, all actions then pending.

*/s/ William M. Skretny*

WILLIAM M. SKRETNY  
Chief United States District Judge

*/s/ John T. Curtin*

JOHN T. CURTIN  
Senior United States District Judge

*/s/ Richard J. Arcara*

RICHARD J. ARCARA  
United States District Judge

*/s/ Michael A. Telesca*

MICHAEL A. TELESCA  
Senior United States District Judge

*/s/ Charles J. Siragusa*

CHARLES J. SIRAGUSA  
United States District Judge

*/s/ David G. Larimer*

DAVID G. LARIMER  
Senior United States District Judge

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

**UNITED STATES DISTRICT COURT JUDGES**

William M. Skretny, Chief Judge. . . . . U.S. Courthouse, Buffalo, NY  
Richard J. Arcara. . . . . U.S. Courthouse, Buffalo, NY  
Charles J. Siragusa. . . . . U.S. Courthouse, Rochester, NY  
John T. Curtin, Senior Judge. . . . . U.S. Courthouse, Buffalo, NY  
Michael A. Telesca, Senior Judge. . . . . U.S. Courthouse, Rochester, NY  
David G. Larimer, Senior Judge. . . . . U.S. Courthouse, Rochester, NY

**UNITED STATES BANKRUPTCY JUDGES**

Carl L. Bucki, Chief Judge. . . . . U.S. Courthouse, Buffalo, NY  
Michael J. Kaplan. . . . . U.S. Courthouse, Buffalo, NY  
John C. Ninfo II. . . . . U.S. Courthouse, Rochester, NY

**UNITED STATES MAGISTRATE JUDGES**

Hugh B. Scott. . . . . U.S. Courthouse, Buffalo, NY  
Jonathan W. Feldman. . . . . U.S. Courthouse, Rochester, NY  
H. Kenneth Schroeder, Jr. . . . . U.S. Courthouse, Buffalo, NY  
Marian W. Payson. . . . . U.S. Courthouse, Rochester, NY  
Jeremiah J. McCarthy. . . . . U.S. Courthouse, Buffalo, NY  
Leslie G. Foschio. . . . . U.S. Courthouse, Buffalo, NY  
Victor E. Bianchini. . . . . U.S. Courthouse, Buffalo, NY

**CLERK OF UNITED STATES DISTRICT COURT**

Michael J. Roemer. . . . . Buffalo, NY

**CHIEF DEPUTY CLERK**

Jeanne M. Spampata. . . . . Buffalo, NY

**DEPUTY-IN-CHARGE**

Jean Marie McCarthy. . . . . Buffalo, NY

**CLERK OF UNITED STATES BANKRUPTCY COURT**

Paul R. Warren. . . . . Buffalo, NY

**CHIEF DEPUTY CLERK**

Lisa Bertino-Beaser. . . . . Buffalo, NY

**DEPUTY-IN-CHARGE**

Vacant . . . . .

**UNITED STATES ATTORNEY**

William J. Hochul, Jr. . . . . Buffalo, NY

**FEDERAL PUBLIC DEFENDER**

Marianne Mariano. . . . . Buffalo, NY

**CHIEF PROBATION OFFICER**

Anthony M. San Giacomo. . . . . Buffalo, NY

**UNITED STATES MARSHAL**

Vacant . . . . .

## **TERRITORIAL JURISDICTION**

Counties of:

Allegany  
Cattaraugus  
Chautauqua  
Chemung  
Erie

Genesee  
Livingston  
Monroe  
Niagara  
Ontario

Orleans  
Schuyler  
Seneca  
Steuben  
Wayne

Wyoming  
Yates

With the waters thereof.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

**LOCAL RULES OF CRIMINAL PROCEDURE**

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## **RULE 1.1**

### **TITLE**

These rules are the Local Rules of Criminal Procedure for the United States District Court for the Western District of New York. They supplement the Federal Rules of Criminal Procedure and are numbered to conform therewith. The Local Rules of Criminal Procedure shall be cited as “L.R. Crim. P.”

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## **RULE 1.2**

### **THE “COURT”**

Wherever these rules refer to the “Court”, “Judge”, or similar term, the term includes a Magistrate Judge, unless the context requires otherwise.

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## **RULE 1.3**

### **AVAILABILITY OF LOCAL RULES**

Copies of these Local Rules and all Court documents referenced herein are available at the Clerk’s offices in Buffalo and Rochester, and on the Court’s webpage at [www.nywd.uscourts.gov](http://www.nywd.uscourts.gov). The following documents may be modified from time to time, in the Court’s discretion. Counsel and *pro se* litigants are expected to comply with the most current Rules, plans and procedures.

- Alternative Dispute Resolution Plan
- Amended Plan for the Disposition of *Pro Se* Cases
- CM/ECF Administrative Procedures Guide
- District Court Schedule of Fees
- Judge’s Individual Rules
- Jury Plan
- Standing Orders
- Criminal Justice Act Plan

Persons, other than litigants permitted to proceed *in forma pauperis*, who wish to obtain a copy of these Local Rules and/or other documents by mail must provide a self-addressed envelope at least 9" x 12" in size with sufficient postage affixed.

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## **RULE 5**

### **USE AND DISCLOSURE OF PRETRIAL SERVICES REPORT**

- (a) **In General.** The use and disclosure of the pretrial services report, and any information obtained by the pretrial services officer in the course of performing the pretrial services function, are governed by 18 U.S.C. § 3153(c). The pretrial services officer must limit disclosure to the minimum information and the minimum number of persons necessary to carry out the purpose of the disclosure.
- (b) **Disclosure of the Pretrial Services Report.** A copy of the pretrial services report shall be given to the attorney for the defendant and the attorney for the government to retain. The report should not be re-disclosed to other persons by the attorney for the defendant or the attorney for the government.
- (c) **Disclosure of the Pretrial Services Recommendation.** Unless otherwise ordered by the court, the pretrial services officer's recommendation as to the propriety and conditions of release will be disclosed to the parties with the pretrial services report.

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## **RULE 6**

### **GRAND JURY**

- (a) Grand juries may be summoned by order of the Court at such times as the public interest requires, to serve until discharged by the Court consistent with 18 U.S.C. §§ 3321, 3322 and Federal Rule of Criminal Procedure 6.
- (b) All grand jury proceedings are governed by Federal Rule of Criminal Procedure 6.
- (c) All motions for relief from orders or process of the grand jury, such as motions to quash subpoenas or motions to hold a witness in contempt, shall be made returnable before the Judge who impaneled the grand jury, or his or her designee.

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## **RULE 7**

### **FILING CASES**

- (a) Every criminal case shall be assigned by the Clerk to a Judge of the District upon the filing of the indictment or information.

- (b) For purposes of case assignment, the Western District of New York is divided into two areas. Cases arising in the eight western counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming (the “Buffalo area”), shall ordinarily be assigned to a Judge in Buffalo. Cases arising in the nine eastern counties: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates (the “Rochester area”), shall ordinarily be assigned to a Judge in Rochester. The assignment within these areas shall ordinarily be by random selection.
- 

## **RULE 12.1**

### **PROCEDURES FOR CRIMINAL CASES**

Unless otherwise ordered by the District Judge to whom a criminal case is assigned, the following procedures shall apply to criminal indictments and informations:

- (a) A United States Magistrate Judge is authorized to arraign defendants and accept not guilty pleas pursuant to Federal Rules of Criminal Procedure 10 and 11.
- (b) After providing the attorneys for the government and all defendants the opportunity to be heard, at arraignment or at a date set at the arraignment, the Court shall issue an order scheduling discovery and motion practice in all criminal cases. Such scheduling order shall include, but not be limited to, the following:
  - (1) dates and terms and conditions for providing discovery between the government and the defendants;
  - (2) dates for filing motions, responses and replies (identifying which aspects of the motion remain in dispute) thereto, and oral arguments of motions; and
  - (3) such other matters as the Court deems appropriate in the exercise of its discretion and supervisory powers.
- (c) Unless authorized by the Court, all motions by a defendant or the government shall be made returnable on the same date.
- (d) Such scheduling order may subsequently be changed only by leave of the Court.
- (e) As soon as practicable after the resolution of motions, the trial attorneys in the case shall meet with the District Judge to set a trial date and schedule any required pre-trial hearing.



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## RULE 12.2

### MOTIONS

Unless otherwise ordered by the Court:

- (a) Motions and hearings on all contested matters shall be heard on the dates and times set by each individual Judge in the Western District of New York. Information regarding such dates and times may be obtained from the Clerk's office.
- (b) If the Judge assigned to hold the Court shall be absent, the Clerk of the Court shall adjourn the hearings on motions or applications to some convenient day.
- (c) All motions and notice thereof shall be governed by the Federal Rules of Criminal Procedure. Original motion papers shall be filed in the Clerk's office, either at the United States Courthouse, Buffalo, New York or at the United States Courthouse, Rochester, New York. Refer to Local Rule of Criminal Procedure 49.1 for more information on filing motion papers.
- (d) Except as provided in subdivision (e), any application for adjournment of a motion shall be made by the attorney, or by an associate, to the Judge before whom the motion is to be argued. Such application shall be made to the Judge's courtroom deputy and not to the Judge's law clerk. In requesting an adjournment, the following guidelines shall be adhered to:
  - (1) the party seeking the adjournment shall first confer with all other parties before approaching the courtroom deputy;
  - (2) a suggested rescheduled date, agreeable to all parties, shall be determined, if possible;
  - (3) the party seeking the adjournment shall notify the courtroom deputy in writing, unless unforeseen circumstances prohibit written notice, of the request and the suggested new date; and
  - (4) the reason for the adjournment must be placed on the record either in open court or in writing, so that the Court may make findings as may be required by the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174.
- (e) Requests for adjournments by *pro se* litigants must be made in writing, by letter to the Court, with copies to all other counsel in the case.

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## RULE 15

### PROCEDURES FOR DEPOSITIONS BY OTHER THAN STENOGRAPHIC MEANS

A Court order is required before taking a deposition by other than stenographic means (i.e., without the use of a stenographic record). However, a prior order is not required to record a deposition both on video and stenographically. In the latter circumstance, the following procedures apply:

- (a) The deposition notice shall state that the deposition will be recorded both stenographically and on video. At the deposition, the camera operator shall be identified. An employee of the attorney who noticed the deposition may act as the camera operator.
- (b) The camera shall be directed at the witness at all times showing a head and shoulders view, except that close-up views of exhibits are permitted where requested by the questioning attorney.
- (c) Prior to trial, counsel for the party seeking to use the video deposition shall approach opposing counsel and attempt to resolve voluntarily all objections made at the deposition.
- (d) The party seeking to use the video deposition at trial shall submit unresolved objections to the Court by way of a motion *in limine*. The motion may be made at any time after the deposition, but shall be made no later than seven days before trial or any earlier deadline established by Court order. The objected-to portion(s) of the transcript shall be annexed to the motion papers.
- (e) In accordance with the Court's ruling on objections, the party seeking to use the video deposition shall notify opposing counsel of the transcript pages and line numbers the party plans to delete from the video. The party seeking to use the video shall then edit the tape accordingly, and shall bear the expense of editing. If the Court overrules an objection made during the deposition, the objection need not be deleted. If requested, the Court will give an instruction at the time the video is shown regarding objections heard on the video.
- (f) At least three days before showing the video, the party seeking to use the video deposition at trial shall deliver a copy of the edited video to opposing counsel. Opposing counsel may then object only if the edited version does not comply with the Court's ruling and counsels' agreement, or if the video's quality is such that it will be difficult for the jury to understand. Such objections, if any, must be made in writing and served at least 24 hours before the video is to be shown.
- (g) The party seeking to use the video deposition should attempt to utilize a storage format compatible with the Court's display equipment. A party utilizing an incompatible format must provide the equipment necessary to display the video in Court.

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## **RULE 23**

### **FREE PRESS - FAIR TRIAL DIRECTIVES**

- (a) All counsel practicing before this Court are expected to be fully familiar with the provisions of the New York Rules of Professional Conduct, eff. April 1, 2009.
- (b) Counsel's attention is specifically directed to Professional Conduct Rule 3.6, captioned Trial Publicity, and Professional Conduct Rule 5.3, captioned Lawyer's Responsibility for Conduct of Non-Lawyers. *See also* Professional Conduct Rule 8.4, providing that any violation, attempt to violate, assistance in a violation of, or inducement of another to violate these local rules, whether undertaken directly or indirectly, constitutes professional misconduct.
- (c) The Court, on motion of either party or on its own motion, may otherwise issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses and any other matter which the Court may deem appropriate for inclusion in such order. In determining whether to impose such a special order, the Court shall consider whether such an order will be necessary to ensure an impartial jury and must find that other, less extreme available remedies, singly or collectively, are not feasible or would not effectively mitigate the pretrial publicity and bring about a fair trial. Among the alternative remedies to be considered are: change of venue, postponing the trial, a searching *voir dire*, emphatic jury instructions, and sequestration of jurors.

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## **RULE 24**

### **JURY TRIALS - CRIMINAL CASES**

- (a) Jury selection in a criminal case shall be governed by Federal Rules of Criminal Procedure 23 and 24, and by such procedures as are established by the trial judge.
- (b) Random selection of petit jurors is made pursuant to the Plan for the Western District of New York as approved by the Second Circuit Judicial Council.

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## **RULE 26**

### **EXHIBITS**

- (a) All exhibits offered by any party at trial, whether or not received as evidence, shall be retained after each day of trial by the party or attorney offering the exhibits, unless the Court orders otherwise. Immediately after the case is submitted to the trier of fact, all exhibits received into evidence shall be delivered to the courtroom deputy. After a verdict is rendered, responsibility for custody of all exhibits reverts back to the parties.

- (b) In the event an appeal is prosecuted by any party, each party to the appeal shall promptly file electronically any exhibits to be transmitted to the appellate court as part of the record on appeal. Documents that cannot be filed electronically, and physical exhibits, other than documents, shall remain in the custody of the attorney producing them who shall permit their inspection by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the Court of Appeals. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties who shall make them available for use by the appellate court upon request.
  - (c) If any party, receives notice from the Clerk concerning the removal of paper or other physical exhibits, and fails to do so within thirty days from the date of notice, the Clerk may destroy or otherwise dispose of those exhibits.
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## **RULE 32.1**

### **PRESENTENCE REPORT**

Sentencing procedures shall be governed by Federal Rule of Criminal Procedure 32, and by such procedures as are established by the sentencing judge.

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## **RULE 32.2**

### **DISCLOSURE OF THE PRESENTENCE REPORT TO COUNSEL FOR VIOLATIONS OF PROBATION OR SUPERVISED RELEASE**

Upon appearance of either retained or assigned counsel on a violation of probation or supervised release, the probation office shall be permitted to provide counsel with a copy of the presentence report and judgment with statement of reasons from the underlying offense.

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## **RULE 44**

### **APPOINTMENT OF COUNSEL**

- (a) Pursuant to the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, the Judges of the United States District Court for the Western District of New York have adopted a Plan for the adequate representation of any person otherwise financially unable to obtain representation.
- (b) A panel of attorneys has been established under the Plan from which the Court may appoint counsel in a particular case. In addition to assignment from the panel of attorneys established under the Plan, the Court shall, whenever appropriate, appoint the Federal Public Defender.

- (c) A copy of the Plan is available in the Clerk's office and on the Court's website at [www.nywd.uscourts.gov](http://www.nywd.uscourts.gov). Reference should be made to the statute for further details, including procedures for obtaining payment for work done and/or reimbursement for expenses.
  - (d) It should be noted that under Rule 4.1 of the Rules of the Second Circuit Court of Appeals supplementing Federal Rules of Appellate Procedure, trial counsel has the duty to continue representing a defendant through the appellate process. Assigned counsel are advised to consider their appellate responsibilities when accepting criminal trial assignments.
- 

## RULE 49.1

### SERVICE AND FILING OF PAPERS

- (a) All criminal cases filed in this Court are assigned to the Electronic Filing System ("ECF"). The ECF procedures and any exceptions to the ECF requirements are set forth in the CM/ECF Administrative Procedure Guide. All pleadings and other papers shall be filed and served in accordance with the Federal Rules of Criminal Procedure and the CM/ECF Administrative Procedures Guide. The party or a designee shall declare, by affidavit or certification, that he or she has provided all other parties in the action with all documents being filed with the Court.
  - (1) A party seeking or opposing any relief under the Federal Rules of Criminal Procedure shall file only such portion(s) of a deposition, interrogatory, request for documents, request for admission, or other material that is pertinent to the application.
  - (2) A party seeking to include in a record on appeal material which was not previously filed shall apply to the Court for an order requiring the Clerk to file such material. The party may make such application by motion or by stipulation of counsel.
- (b) All orders, whether issued on notice or *ex parte*, together with the papers on which they were granted, shall be filed forthwith.
- (c) Unless otherwise provided by the Court, a moving party who wishes to file reply papers shall file and serve the notice of motion and supporting papers at least fourteen days prior to the return date of the motion. The notice of motion shall also state that the moving party intends to file and serve reply papers and that the opposing party is therefore required to file and serve opposing papers at least seven days prior to the return date. Reply papers shall be filed and served at least three business days before the return date. Under all other circumstances, and except as ordered otherwise by the Court, notices of motion together with supporting affidavits and memoranda shall be served on the parties and filed with the Clerk at least seven business days prior to the return date of the motion. Answering affidavits and memoranda shall be served and filed at least three business days prior to the return date. Sur-reply papers shall not be permitted unless otherwise ordered by the Court.
- (d) A party seeking to shorten the notice requirements prescribed in subparagraph (c) must make a motion for an expedited hearing setting forth the reasons why an expedited hearing is

required. The motion for an expedited hearing may, for cause shown, be made *ex parte*, and must be accompanied by:

- (1) the motion that such party is seeking to have heard on an expedited basis, together with supporting affidavits and memorandum of law; and
- (2) a proposed order granting an expedited hearing, with dates for service of the motion (by personal service or overnight mail), responding papers, and the hearing left blank to be filled in by the Court.

Immediately after filing the motion for an expedited hearing (and accompanying documents) with the Clerk's office, counsel for the moving party shall personally deliver courtesy copies of such motion to chambers and await further instructions from the Court. In the event that the moving party is represented by out-of-town counsel who is unable to personally deliver courtesy copies, counsel shall mail such courtesy copies directly to chambers and shall contact chambers by telephone to request a waiver of this requirement.

- (e) Without prior approval of the Court, briefs or memoranda in support of or in opposition to any motion shall not exceed twenty-five pages in length and reply briefs shall not exceed ten pages in length and shall comply with the requirements of L.R. Crim. P. 49.2. Applications to exceed these page limits shall be made in writing by letter to the Court with copies to all counsel, at least three business days before the date on which the brief must be filed. When the Court grants permission to a moving party to file an oversized brief or memorandum, the responding party shall be permitted to file an oversized brief without an additional motion to the Court.
- (f) Good cause shall be shown for the making of any application *ex parte*. The papers in support of such application shall state attempts made to resolve the dispute through a motion on notice and/or state why notice of the application for relief may not be given.
- (g) All papers, other than a subpoena or a summons and complaint, may be served on counsel of record by overnight delivery service at the address designated by the attorney for that purpose, or if none is designated, at the attorney's last known address. Service by overnight delivery shall be complete upon deposit of the paper(s), enclosed in a properly addressed wrapper, into the custody of the overnight delivery service, prior to the latest time designated by the service for overnight delivery. Where a period of time prescribed by either the Federal Rules of Criminal Procedure or these Local rules is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period. "Overnight delivery service" means any delivery service, which regularly accepts items for overnight delivery to any address within the Court's jurisdiction.

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## RULE 49.2

### FORM OF PAPERS

- (a) **Form Generally.** All pleadings, motions, and other papers that a party presents for filing, whether in paper form or in electronic form, shall meet the following requirements:

- (1) all text and footnotes shall be in a font size of at least 12-point type;
  - (2) all text in the body of the document must be double-spaced, except that text in block quotations and footnotes may be single-spaced;
  - (3) extensive footnotes and block quotes may not be used to circumvent page limitations;
  - (4) documents must have one-inch margins on all four sides; and
  - (5) pages must be consecutively numbered.
- (b) **Additional Requirements for Paper Filing.** Documents presented for filing in paper form shall meet the following additional requirements:
- (1) documents must be on durable white 8½" x 11" paper of good quality;
  - (2) all text must be plainly and legibly written, typewritten, printed or reproduced;
  - (3) documents must be in black or blue ink;
  - (4) the pages of each document must be stapled or in some other way fastened together;
  - (5) all documents must be single-sided; and
  - (6) documents presented for paper filing must contain an original signature.

The Court may reject documents that do not comply with these requirements.

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### **RULE 49.3**

#### **STIPULATIONS**

All stipulations except stipulations made in open court and recorded by the court reporter, shall be in writing and signed by each attorney and/or *pro se* litigant. The parties shall determine who will be responsible for filing, and a copy of the stipulation, with signatures conformed (e.g., “s/Jane Doe,” “s/John Smith”), shall be filed electronically. The Court will act on the filed stipulation, as necessary and appropriate.

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## **RULE 49.4**

### **DOCUMENTS TO BE PROVIDED BY THE U.S. ATTORNEY'S OFFICE**

- (a) The United States Attorney's Office shall provide the Clerk with an adequate number of copies of charging instruments for distribution.
  - (b) The United States Attorney's Office is required to provide the Clerk with redacted copies of charging instruments and related documents when such documents are necessary.
- 

## **RULE 53**

### **CAMERAS AND RECORDING DEVICES**

- (a) Except as provided by order of the Chief Judge or by subparagraph (b), no person, other than Court officials engaged in the conduct of court business and/or responsible for the security or maintenance of Court facilities, shall bring any camera, transmitter, receiver, recording device, cellular telephone, or other personal electronic device into the District's Courthouses.
  - (b) Any Judge presiding over a ceremonial proceeding (e.g., naturalization ceremony, mock trial, judge's investiture) may, in his or her discretion, allow the use of cameras and other equipment during the proceeding.
- 

## **RULE 55**

### **SEALING OF DOCUMENTS IN CRIMINAL CASES**

- (a) Except where restrictions are imposed by statute or rule, there is a presumption that Court documents are accessible to the public and that a substantial showing is necessary to restrict access.
- (b) When the sealing of a criminal matter is ordered, the Clerk shall inscribe in the public records of the Court only the case number, the fact that a case was filed under seal, the name of the District Judge or Magistrate Judge who ordered the seal, and (after assignment of the case to a District Judge and a Magistrate Judge in the normal fashion) the names of the assigned District Judge and the assigned Magistrate Judge.
- (c) Documents authorized to be filed under seal or pursuant to a protective order shall comply with the procedures set forth in the CM/ECF Administrative Procedures Guide.
- (d) A party seeking to have a document, party, or case sealed shall comply with the procedures set forth in the CM/ECF Administrative Procedures Guide.



- (e) Unless otherwise directed by the Court, a sealed document or case shall remain sealed even after final disposition of the case. A party seeking to have a sealed document unsealed must seek relief by motion on notice.

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## RULE 57

### ATTORNEY ADMISSION, APPEARANCE AND DISCIPLINE, AND STUDENT LAW CLERKS AND PRACTICE

- (a) All rules related to attorney admission to practice, attorneys of record, discipline of attorneys, student practice and student law clerks are found in L.R. Civ. P. 83.1, 83.2, 83.3, 83.6, and 83.7, all of which are incorporated by reference into these Local Rules of Criminal Procedure.
- (b) During counsel's initial appearance on behalf of a criminal defendant, the Court may inquire into whether counsel has been "fully retained" for the duration of the criminal proceedings. The "full retained" inquiry serves to remind counsel that once he or she appears as the attorney of record, the Court will expect counsel to continue to represent that defendant throughout the duration of the trial court proceedings. Partial representation of a criminal defendant is not permitted in this Court, and an attorney who has appeared as the attorney of record may withdraw only for good cause shown. Non-payment of legal fees, without more, may not be sufficient to demonstrate good cause. Therefore, counsel should make adequate financial arrangements with a client before accepting representation. However, nothing in this Rule shall prohibit an attorney from seeking a mid-case appointment under the CJA where the interests of justice so dictate.

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## RULE 58.1

### ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGE

- (a) **Misdemeanor Cases.** All misdemeanor cases shall be assigned, upon the filing of an information, complaint, or violation notice, or the return of an indictment, to a Magistrate Judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and Federal Rule of Criminal Procedure 58. In the event the defendant does not waive trial before the District Court as provided therein, the file shall be returned to the Clerk of the Court for assignment to a District Court Judge. The Magistrate Judge, may, however, set bond, appoint counsel, and accept a plea of not guilty without a waiver being executed.
- (b) **Extradition Proceedings.** A United States Magistrate Judge is authorized to conduct extradition proceedings in accordance with 18 U.S.C. § 3184.
- (c) **Felony Cases.** Upon the return of an indictment or the filing of an information charging a felony, arraignment may be held before a Judge or a Magistrate Judge. Further proceedings in the case shall be in accordance with the order of the Judge to whom the case is assigned.

Felony cases include those in which an instrument charges both felony and non-felony offenses.

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## **RULE 58.2**

### **REVIEW OF MAGISTRATE JUDGES' ACTIONS**

**(a) Review.**

- (1) Review of a Magistrate Judge's orders or proposed findings of fact and recommendations for disposition shall be governed by 28 U.S.C. § 636(b)(1). If the parties consent to trial before the Magistrate Judge, there shall be no review or appeal of interlocutory orders to the District Court.
- (2) All orders of the Magistrate Judge issued pursuant to these rules, as authorized by 28 U.S.C. § 636(b)(1)(A), shall be final unless within fourteen days after being served with a copy of the Magistrate Judge's order, a party files with the Clerk and serves upon opposing counsel a written statement specifying the party's objections to the Magistrate Judge's order. The specific matters to which the party objects and the manner in which it is claimed that the order is clearly erroneous or contrary to law shall be clearly set out.
- (3) A party may object to proposed findings of fact and recommendations for dispositions submitted by a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), by filing with the Clerk and serving upon opposing counsel written objections to the proposed findings and recommendations within fourteen days after being served with a copy of such findings and recommendations, as provided in 28 U.S.C. § 636(b)(1)(c). The time for filing objections to the proposed findings and recommendations may be extended by direction of the District Judge. The written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.
- (4) Any party filing objections to a Magistrate Judge's order or recommended disposition must include with the objections to the District Judge a written statement either (1) certifying that the objections do not raise new legal/factual arguments, or (2) identifying the new arguments and explaining why they were not raised to the Magistrate Judge.

- (b) Appeals from Judgments in Misdemeanor Cases (18 U.S.C. § 3402).** Appeals from a decision, order or judgment of conviction by a Magistrate Judge shall be taken pursuant to 18 U.S.C. § 3402 and Federal Rule of Criminal Procedure 58. Appeals shall be given a criminal case number and assigned by the Clerk to a District Judge. The appellant shall, within thirty days of the filing of the notice of appeal, file the record and shall also file a typewritten memorandum with the Clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall concurrently serve a copy of the memorandum on the appellee(s). The appellee(s) shall file an answering

memorandum within thirty days of the filing of the appellant's memorandum. The Judge may extend these time limits upon a showing of good cause. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his or her memorandum within the time provided by the rule or any extension thereof, the Court may dismiss the appeal.

- (c) **Appeals from Other Orders of a Magistrate Judge.** Appeals from any other decisions and orders of a Magistrate Judge not provided for in this rule shall be taken as provided by governing statute, rule or decisional law.

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### **RULE 58.3**

#### **FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE IN PETTY OFFENSE MATTERS**

- (a) This rule incorporates the rules of Court relative to forfeiture of collateral in lieu of appearance in petty offense matters, copies of which are available in the Clerk's office.
- (b) For petty offenses originating under the applicable federal statute or regulations or applicable state statute by virtue of the Assimilative Crimes Act (18 U.S.C. § 13) occurring within the territorial jurisdiction of a United States Magistrate Judge, including areas within the boundaries of United States military installations, federal buildings and grounds, national forests, and property under the charge and control of the Veterans Administration, the person so charged shall post collateral and may, in lieu of appearance, waive appearance before a United States Magistrate Judge, and consent to the forfeiture of collateral. If collateral is forfeited, such action shall be tantamount to a finding of guilt.
- (c) A list of petty offenses is available in the Clerk's office appended to the rules of court referred to in subdivision (a) of this local rule. Those offenses marked with an asterisk (\*) and for which no amount of collateral is shown require a mandatory appearance before a United States Magistrate Judge.
- (d) If a person charged with an offense under section (a) of this rule fails to post and forfeit collateral, any punishment, including fine, imprisonment, or probation may, upon conviction, be imposed within the limits established by the applicable law.
- (e) Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, in which event the arrested person shall without unnecessary delay be taken before the nearest available United States Magistrate Judge or, in the event that a Magistrate Judge is not reasonably available, before a state or local judicial officer authorized by 18 U.S.C. § 3041, as provided in Federal Rule of Criminal Procedure 5.

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## **RULE 59**

### **MODIFICATION OF RULES**

Any of the foregoing rules shall, in special cases, be subject to such modifications as may be necessary to meet emergencies or to avoid injustice or great hardship.

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